

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-41345  
Conference Calendar

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ELIAZAR R. LEAL, SR.,

Plaintiff-Appellant,

versus

ROCHELLE MCKINNEY; TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE HEALTH DIRECTOR; TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE DENTAL DEPARTMENT, Personnel in Texas Department  
of Criminal Justice Dental Department; TEXAS DEPARTMENT  
OF CRIMINAL JUSTICE ADMINISTRATOR,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 5:97-CV-181  
- - - - -

June 17, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:\*

Eliazar Leal, Sr., Texas prisoner # 766199, appeals the district court's dismissal of his complaint as frivolous. He argues that his complaint, which alleged that the defendants refused to provide him with a permanent filling for his tooth until he had been in the prison system for a year and had passed

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

a plaque test, sufficiently asserted an Eighth Amendment violation. Leal stated in his complaint that he twice received dental treatment and sealant for his tooth. His complaint failed to allege that the defendants acted with deliberate indifference to a substantial risk of serious harm, and therefore the district court did not abuse its discretion in dismissing Leal's complaint as frivolous. See Hare v. City of Corinth, Miss., 74 F.3d 633, 648 (5th Cir. 1996)(en banc); Denton v. Hernandez, 504 U.S. 25, 31-34 (1992); see also 28 U.S.C. § 1915(e)(2)(B)(I).

AFFIRMED.